IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JOHN A. JAMESON, and TANYA M. JAMESON, husband and wife, TAYLOR J. JAMESON, ANTHONY M. JAMESON, KARISSA M. JAMESON, minor children by and through their parents JOHN and TANYA JAMESON,	)	**No. 27460-8-III**
Appellants,	)	**Division Three**
v.	)	**UNPUBLISHED OPINION**
NICHOLAS POLELLO, and JANE DOE POLELLO,	)	
Respondent.	)	

Brown, J. ─ John A. Jameson and Tanya M. Jameson appeal the summary dismissal as time barred of their automobile accident claims in their suit against Nicholas Polello. We hold under these facts and *Entranco Eng'rs v. Environdyne, Inc.*, 34 Wn. App. 503, 505-06, 662 P.2d 73 (1983), that the use of an incorrect first name for Mr. Polello in the complaint served at Mr. Polello's address is insufficient for summary dismissal under the statute of limitations.

FACTS

On August 24, 2004 at approximately 9:13 p.m., the Jamesons and their minor children were in an automobile accident with 18-year-old Mr. Polello allegedly caused by Mr. Polello's failure to use his headlights. The responding officer completed a police report listing the parties' correct names.

On August 21, 2007, three days before the three-year statute of limitations expired, Mr. Jameson filed a complaint, naming "Michael Polello" and "Jane Doe Polello" as the defendants. Clerk's Papers (CP) at 3. Under RCW 4.16.170, the statute of limitations is tolled "ninety days from the date of filing the complaint" for personal service of the summons and complaint on the defendant. Accordingly, the statute of limitations would run on November 21, 2007 (90 days after the filing of the complaint).

On September 26, 2007, after realizing their mistake, the Jamesons filed an amended summons and complaint, naming "Nicholas Polello" as a defendant. CP at 8, 10. The complaint states it was amended "due to a scripter error in the first name of the Defendant." CP at 10.

On October 25, 2007, a process server went to the Polello residence and asked for "Michael." CP at 15. A young man answered the door and allegedly identified

himself as Michael's son and accepted service. The young man was actually the son of Mr. Polello's father's girl friend. The process server served the original summons and complaint; not the amended summons and complaint.

On November 13, 2007, Mr. Polello's attorney filed a notice of appearance. The Jamesons filed another amended summons and complaint on November 29, 2007; again stating that the purpose of the amendment was "due to a scripter error in the first name of the Defendant." CP at 19. Neither the September 26 nor the November 29 amended summons and complaint were served on Mr. Polello.

Mr. Polello requested summary judgment dismissal, arguing he was not properly served before the expiration of the statute of limitations. The trial court granted partial summary judgment, dismissing the parents' claims but not the minor children's claims because the limitations period had not run on their claims. The Jamesons appealed.

ANALYSIS

The issue is, under these facts, whether the trial court erred in dismissing Mr. and Mrs. Jamesons' personal injury claims against Mr. Polello as time barred when service of the complaint showed an incorrect first name for Mr. Polello at Mr. Polello's address.

Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Folsom v. Burger King,* 135 Wn.2d 658, 663, 958 P.2d 301 (1998). When reviewing a summary judgment

order, an appellate court engages in the same de novo inquiry as the trial court. *Id.*

In general, a mere misnomer does not cause a summons to fail for lack of notice to the defendant. *Entranco,* 34 Wn. App. at 505-06. In deciding whether an amended complaint merely corrected a misnomer or whether it brought in a new party, the issue is whether the allegations of the original complaint were sufficiently specific to give notice to the party served that an action had been started against it. *Id.* at 506.

Entranco is illustrative. There, the intended defendant was "Envirodyne Engineers, Inc." (Engineers). Entranco served its summons and complaint upon Engineers, but the complaint incorrectly designated Engineers' parent corporation, Envirodyne Industries, Inc. (Industries), as the defendant. Entranco obtained a default judgment against Industries. Industries moved to vacate the judgment, while Entranco moved to amend the judgment by substituting Engineers' name for Industries'. The court found the complaint specific enough to give notice to Engineers, the party served, and therefore permitted the judgment to be enforced against Engineers. *Entranco*, 34 Wn. App. at 506. "So far as the record discloses, the complaint described only the activities of Engineers, the party served. Industries, although named, could not reasonably have been understood to be the intended defendant because Industries never transacted business in Washington." *Id.*

As in *Entranco*, the intended defendant here, Nicholas Polello, was served with a complaint using an incorrect first name. The complaint was served at his home. And,

the original complaint described in detail the accident that involved Mr. Polello, including the date, location, and sequence of events that led to the accident. Mr. Polello could not reasonably have understood the original complaint as describing the conduct of another person. Instead, with this information, Mr. Polello reasonably should have recognized himself as the intended defendant. Therefore, the Jamesons' mistake in listing the wrong first name falls into the category of misnomer. The summons and complaint provided adequate notice of the lawsuit and since it was served within 90 days of the filing of the complaint, it was filed within the tolling period of RCW 4.16.170. Given all, we conclude the trial court erred in granting partial summary judgment, dismissing the adult Jamesons.

Because our holding is dispositive, we do not address the Jamesons' alternative relation-back doctrine contentions under CR 15. *State v. Thiefault*, 160 Wn.2d 409, 414 n.1, 158 P.3d 580 (2007).

Reversed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Brown, J.

WE CONCUR:

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Kulik, J.

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Korsmo, J.